

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v.

NATIVE WHOLESALE SUPPLY CO.

Defendant.

ORDER
08-CV-850A

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

NATIVE WHOLESALE SUPPLY CO. ,

Plaintiff,

v.

THOMAS VILSACK, in his capacity as
Secretary of the United States Department
of Agriculture,

Defendant.

ORDER
09-CV-0241A

The two-above captioned cases were referred to Magistrate Judge H. Kenneth Schroeder, Jr., pursuant to 28 U.S.C. § 636(b). October 20, 2009, Magistrate Judge Schroeder issued a Report, Recommendation and Order recommending that the two actions be consolidated, that government's motion to dismiss filed in National Wholesale Supply v. Vilsack, 09-cv-241 ("Vilsack

action”), be denied, and that the government’s motion for summary judgement filed in United States v. Native Wholesale Supply, 08-cv-850, be held in abeyance pending resolution of legal issues raised in the Vilsack action.

The government filed a timely objection to the Magistrate Judge’s Report, Recommendation and Order, and Native Wholesale filed a response urging this Court to deny the objections. Oral argument was held on March 25, 2010.

Pursuant to 28 U.S.C. § 636(b)(1)(A), the district court "may reconsider any pretrial matter under this [section] where it has been shown that the magistrate's order is clearly erroneous or contrary to law."

The Court has reviewed the government's appeal and Magistrate Judge Schroeder’s Report, Recommendation and Order. Upon such review and after hearing argument from counsel, the Court finds that Magistrate Judge Schroeder’s Report, Recommendation and Order is neither clearly erroneous nor contrary to law. Accordingly, for the reasons stated by Magistrate Judge Schroeder, the Court finds that the actions should remain consolidated, that the government’s motion to dismiss the Vilsack action is hereby denied, and the motion for summary judgment filed in United States v. Native Wholesale Supply, 08-cv-850, is denied without prejudice to refiling pending resolution of other matters raised in the Vilsack action.

The matter is referred back to Magistrate Judge Schroeder for further proceedings.

SO ORDERED.

s/ Richard J. Arcara

HONORABLE RICHARD J. ARCARA
UNITED STATES DISTRICT JUDGE

DATED: March 26, 2010